REMARKS

Claims 1-20, 22-81 and 83-99 remain pending in the application. Reconsideration is respectfully requested in light of the following remarks.

Provisional Double Patenting Rejection:

The Examiner provisionally rejected claims 1-20, 22-81 and 83-99 under the judiciary created doctrine of obviousness-type double patenting as being unpatentable over claims 1-116 of co-pending Application no. 10/055,773. Applicants traverse this rejection for at least the following reasons.

First, Applicants traverse this rejection on the grounds that the Examiner has not stated a proper *prima facie* rejection. MPEP 804.II.B.1 also states that the Examiner should list the differences between **each** rejected claim and the claims of the other patent/application, and for **each** difference the Examiner should give the reasons why a person of ordinary skill in the art would conclude that the invention defined in the claim is an obvious variation of the invention defined in a claim of the other patent/application. The Examiner has included a comparison table outlining what he believes to be similarities between claim 39 of the present invention and claims 1, 3, 32, and 35 of co-pending Application no. 10/055,773. However, he has not given any **reasons** why a person of ordinary skill in the art would conclude that the invention defined in claim 39 is an obvious variation of the invention defined in claims 1, 3, 32, and 35 of co-pending Application no. 10/055,773, as is required. In addition, the Examiner has not specifically addressed **each difference** of **each claim** of the present application compared to the claims of the other application. Instead, the Examiner merely includes a comparison chart for a single one of the independent claims of the present invention, with no mention of the other independent or dependent claims. As clearly seen from the Examiner's comparison chart, there are clearly differences between the claims of the two applications. To establish a *prima facie* rejection, the Examiner must provide reasons supported by evidence of record as to why each difference would be obvious. The

Examiner clearly has not met the requirements stated in MPEP 804.II.B.1 to establish a *prima facie* obviousness-type double patenting rejection. Accordingly, Applicants respectfully request removal of the double patenting rejection of claims 1-20, 22-81 and 83-99.

Furthermore, the Examiner's comparison table outlines limitations of claim 39 of the present invention that are clearly distinct from the referenced limitations in claims 1, 3, 32, and 35 of co-pending Application no. 10/055,773 (hereinafter referred to as "'773.") For example, the Examiner equates the limitation, "wherein said advertisement for the peer group comprises: an identifier for the peer group," in claim 39 of the present invention with the limitation, "wherein each of the plurality of peer nodes includes a unique identifier configured for use in distinguishing each peer node from the other peer nodes in the peer-to-peer environment," in claim 35 of '773 (emphasis added). However, the identifier recited in the referenced limitation of claim 35 of '773 explicitly identifies a single peer node, not a peer group. None of the claims of '773 recites anything about an identifier of a peer group, much less one contained in an advertisement for such a peer group.

Applicants assert that other limitations recited in claims 1-20, 22-81 and 83-99 of the present invention further distinguish over the claims of '773.

For at least the reasons above, the rejection of claims 1-20, 22-81 and 83-99 under the judiciary created doctrine of obviousness-type double patenting as being unpatentable over claims 1-116 of co-pending Application no. 10/055,773 is unsupported by the art and by the Examiner's remarks, and removal thereof is respectfully requested.

Section 103(a) Rejections:

The Examiner rejected claim 39 under 35 U.S.C. § 103(a) as being unpatentable over Rochberger et al. (U.S. Patent 6,456,600) (hereinafter "Rochberger") and Weisman et al. (U.S. Publication 2002/0112058), claims 40, 41 and 43-45 as being unpatentable

over Rochberger and Weisman and further in view of McCanne et al. (U.S. Patent 6,415,323) (hereinafter "McCanne"), claim 42 as being unpatentable over Rochberger and Weisman and further in view of Dutta et al. (U.S. Publication 2002/0073075) (hereinafter "Dutta"), and claims 48 and 49 as being unpatentable over Rochberger and Weisman and further in view of Zhang (U.S. Patent 6,810,259). Applicants traverse this rejection for at least the following reasons.

The rejection is improper because Weisman is not a prior art reference. More specifically, the Weisman publication was filed on June 1, 2001, after Applicants' priority date of April 24, 2001. Weisman does claim the benefit of a provisional application filed December, 1, 2000. However, the December, 1, 2000 filing date can only be used as Weisman's 35 U.S.C. § 102(e) prior art date for the subject matter that is common to both the Weisman publication and the provisional application. A review of Weisman's provisional application reveals that it varies considerably from Weisman's published utility application. Unless the Examiner can prove that the subject matter on which the Examiner is relying on to reject Applicants' claims is also entirely present in Weisman's provisional application, the rejection is improper. *See, In re Wertheim*, 209 USPQ 554 (CCPA 1981).

For example, Weisman's provisional application appears to be a reference manual to using the UPnP API. However, Weisman's provisional application does not appear to disclose or mention, anything regarding using the UPnP API for peer-to-peer networking purposes, as relied on by the Examiner in the rejection of Applicants' claims.

Moreover, the Weisman publication is not entitled to the June 30, 1999 date as a section 102(e) prior art date unless at least one claim of the Weisman published application is supported (under 35 U.S.C. § 112) in the provisional application. Under 35 U.S.C. 119(e)(1), an application is not entitled to a provisional application's filing date as a prior art date unless at least one claim of the published utility application is supported (per 35 U.S.C. § 112) in the provisional application. Weisman's provisional application does not appear to fully support the claims of Weisman's utility application. For

example, Weisman's provisional application does not appear to support peer networking protocol limitations of claim 1 in Weisman's utility application.

The rejection is improper unless the Examiner can also show that Weisman's published application has the necessary claim support in the provisional application to be entitled to the provisional application's filing date as its § 102(e) prior art date. *See also* M.P.E.P. § 2136.03(IV). Since the Examiner has not provided the necessary evidence to show that the Weisman publication is prior art to the present application, the current rejection is improper.

Furthermore, regarding claim 39, contrary to the Examiner's assertion, Rochberger in view of Weisman does not teach or suggest program instructions executable by the processor to: *create an advertisement for a peer group in accordance with a protocol.* The Examiner cited Rochberger (column 11, line 58 – column 12, line 29) as teaching this limitation. Applicants previously noted that this passage describes uplink advertisements, which are used to indicate to a node in a peer group which border nodes have connectivity to higher level nodes. Therefore, rather than being an advertisement for a peer group, these uplinks are advertisements for these higher level nodes that the peer group may be connected to through a border node.

In the Response to Arguments section of the Office Action dated March 7, 2007, the Examiner points to Rochberger, column 15, lines 47-59, which states, "First, a list of all border nodes within a peer group is created and maintained (step 50). Nodes placed on the list are nodes that advertised at least one uplink." (Emphasis Applicants'.) The Examiner submits that this citation obviously reads on the claimed advertisement for a peer group. This is incorrect. **This citation teaches a list of nodes that have advertised an uplink, not an advertisement for the nodes themselves or for any peer group of nodes.** The list of nodes referred to in Rochberger is used to create a table of metrics associated with the best paths between individual nodes. It has nothing to do with an advertisement for a peer group, nor is any such peer group advertisement taught in Rochberger.

Rochberger in view of Weisman also fails to teach or suggest an advertisement for a peer group that comprises *a description of a common set of services to be instantiated within the peer group by members of the peer group*. The Examiner has admitted that Rochberger fails to teach this limitation and has relied on Weisman to teach it, in paragraph [0036]. Weisman describes a single peer networking host that provides a set of services for various software modules (hosted devices 108-109, and hosted bridge 110 for bridged device 112) to interact with other devices on network 116. These services are not described as being instantiated by members of a peer group, nor is any such peer group described. Instead, the peer networking host framework and hosted devices are all described as being instantiated on a single node, the peer networking host. The cited paragraph, paragraph [0036], describes that the hosted devices may register service objects for services instances that they contain and that these hosted services implement a dispatch interface. These hosted services are also not a common set of services to be instantiated by members of a peer group, but are services instantiated on individual hosted devices (software modules on the peer networking host) connected to the network through the peer networking host. Furthermore, there is clearly nothing in Weisman that teaches or suggests an advertisement for a peer group including a description of a common set of services be instantiated within the peer group by members of the peer group, since no such common set of services is disclosed. Therefore, Applicants assert that Weisman fails to overcome the deficiencies of Rochberger in teaching this limitation.

In the Response to Arguments section of the Office Action dated March 7, 2007, the Examiner points out that the rejection did not cite Weisman as teaching members of a peer group, but cited Weisman as teaching "a description of a common set of services to be instantiated by peer nodes or devices." The Examiner further submits that Weisman teaches, "For hosting by the Device Host, the Hosted Devices and Bridges 108-110 (FIG. 1) register their services with the Registrar 150 (via a registrar interface described below), including providing discovery, presentation and control information for their services so that the Device Host can respond to discovery, presentation and control requests from

other peer networking devices 120-122 for the Hosted Devices and Bridges," in paragraph [0044] and, "When a device is added to the network, the UPnP discovery protocol allows that device to advertise its services to control points on the network," in paragraph [0840]. The Examiner submits that these passages show that Weisman clearly teaches the claimed limitations. **Applicants again assert that these passages describe a set of services for a single device, not a common set of services for multiple devices (whether or not the devices are members of a peer group) and again assert that Weisman does not overcome the deficiencies of Rochberger in teaching the common set of services of Applicants' claim.**

Rochberger in view of Weisman also fails to teach or suggest an advertisement for a peer group that comprises *a membership service advertisement indicating how other peers may request to join the peer group.* The Examiner cited Rochberger (column 9, line 66 – column 10, line 6) as teaching this limitation. This passage describes nodes exchanging Hello messages with their immediate neighbors to determine local state information. This local state information includes peer group membership of the node's neighbors. However, there is nothing in this passage that teaches or suggests a membership service advertisement indicating how other peers may request to join a peer group, nor that such a membership service advertisement is comprised in a peer group advertisement, as required by claim 39.

In the Response to Arguments section of the Office Action dated March 7, 2007, the Examiner submits that this limitation is taught in Rochberger, column 3, lines 39-65, which states, "As described previously, when a node first learns about the existence of a neighboring peer node which resides in the same peer group, it initiates the database exchange process in order to synchronize its topology database with that of its neighbor's." (Emphasis added.) The Examiner submits that this passage describes "a peer node joining a peer group." **This is clearly incorrect. Instead, this citation clearly describes an operation of a node that already resides in a peer group. In any case, this clearly has nothing to do with a membership service advertisement indicating how other peers may request to join the peer group, as recited in claim**

39. The Examiner notes that the claim language is to be broadly interpreted. However, Applicants remind the Examiner that the Examiner's interpretation must be consistent with the teachings of Applicants' specification. Applicants assert that there is nothing in the Examiner's citations or remarks that could be reasonably interpreted as teaching the membership service advertisement of claim 39, in light of Applicants' specification.

Furthermore, Rochberger in view of Weisman fails to teach or suggest *publish at least a portion of said advertisement for the peer group including said identifier and said membership service advertisement.* The Examiner has admitted that Rochberger fails to teach this limitation and has relied on Weisman to teach it, in paragraph [0034]. However, this paragraph describes, "Device Host API 102 enables software modules (the hosted devices 108-109 and bridges 110 for bridged devices 112) to publish themselves as peer networking-enabled devices." This clearly does not describe publishing an advertisement for a peer group, but describes publishing software modules (which are instantiated on the peer networking host) through the device host API. Therefore, Applicants assert that Weisman fails to overcome the deficiencies of Rochberger in teaching this limitation.

The Examiner submits that it would have been obvious to one having ordinary skill in the art at the time of the invention to modify Rochberger to include a description of a common set of services to be instantiated by peer nodes or devices in a peer group advertisement and to publish at least a portion of said advertisement for the peer devices including said identifier and said membership service advertisement in order to provide services for software and devices on a computer to expose them as controlled devices per a peer networking protocol (Weisman, paragraph [0005]).

Applicants assert, however, that neither Rochberger or Weisman, or the combination thereof, teaches or suggests a peer group advertisement at all, much less one having the specific limitations recited in claim 39. Therefore, it would not be obvious to publish such an advertisement, nor to include additional elements in it.

In the Response to Arguments section of the Office Action dated March 7, 2007, the Examiner notes that Weisman is not cited to teach a peer group, Rochberger is. This has nothing to do with Applicants' argument. Applicants' argument is that Weisman does not teach publishing a peer group advertisement that includes a peer group identifier and a membership service advertisement. **As discussed above, the combined references do not teach such a peer group advertisement, nor do they teach publishing such an advertisement.**

Applicants remind the Examiner that to establish a *prima facie* obviousness of a claimed invention, all claim limitations must be taught or suggested by the prior art. *In re Royka*, 490 F.2d 981, 180 U.S.P.Q. 580 (C.C.P.A. 1974), MPEP 2143.03. As discussed above, Rochberger in view of Weisman clearly fails to teach or suggest all the limitations of claim 39, whether the references are taken separately or in combination.

For at least the reasons above, the rejection of claim 39 is unsupported by the cited art and removal thereof is respectfully requested.

Claims 86 and 98 include limitations similar to those discussed above regarding claim 39. Therefore, the arguments presented above apply with equal force to these claims as well.

Regarding claim 40, contrary to the Examiner's assertion, Rochberger in view of Weisman and McCanne fails to teach or suggest *wherein said advertisement for the peer group further comprises a name associated with the peer group.* The Examiner cites McCanne (column 18, lines 25-48) as teaching this limitation. This passage teaches a multi-part name for anycast referral nodes (ARNs) and service nodes. However, since Rochberger in view of Weisman does not teach or suggest an advertisement for a peer group, McCanne cannot teach or suggest the addition of a peer group name to such an advertisement.

For at least the reasons above, the rejection of claim 40 is unsupported by the cited art and removal thereof is respectfully requested.

Regarding claim 41, contrary to the Examiner's assertion, Rochberger in view of Weisman and McCanne fails to teach or suggest *wherein said name associated with the peer group is obtained from a centralized naming service coupled to the network, so that said name associated with the peer group is unique within the network.* The Examiner cites McCanne (column 9, lines 28-47) as teaching this limitation. This passage describes the Domain Name System (DNS) which handles IP host name-to-address mappings and which can be adapted for use in mapping an anycast address back to the master service site or to a set of sub-services. However, since Rochberger in view of Weisman does not teach or suggest an advertisement for a peer group, McCanne cannot teach or suggest a peer group name in a peer group advertisement that is obtained from such a centralized naming service.

For at least the reasons above, the rejection of claim 41 is unsupported by the cited art and removal thereof is respectfully requested.

Regarding claim 42, contrary to the Examiner's assertion, Rochberger in view of Weisman and Dutta fails to teach or suggest *wherein said advertisement for the peer group further comprises keywords for use in indexing and discovering the peer group.* The Examiner cites Dutta as teaching this limitation in paragraph [0083]. This passage describes an augmented search process that includes both an index search and a peer-to-peer search. While this search technique uses indexing, it does not teach or suggest that this index search searches for (or finds) keywords in advertisements for peer groups, nor does Rochberger in view of Weisman teach or suggest such peer group advertisements, as discussed above.

For at least the reasons above, the rejection of claim 42 is unsupported by the cited art and removal thereof is respectfully requested.

Regarding claim 43, contrary to the Examiner's assertion, Rochberger in view of Weisman and McCanne fails to teach or suggest ***wherein said advertisement for the peer group further comprises a description of an initial service to be instantiated by other peer nodes when joining the peer group.*** The Examiner cites McCanne (column 13, line 65 – column 14, line 32) as teaching this limitation. However, there is nothing in this passage about joining a peer group or instantiating an initial service upon joining a peer group, much less about an advertisement for a peer group comprising a description of such an initial service. In addition, as discussed above, Rochberger in view of Weisman fails to teach or suggest such peer group advertisements.

For at least the reasons above, the rejection of claim 43 is unsupported by the cited art and removal thereof is respectfully requested.

Regarding claim 44, contrary to the Examiner's assertion, Rochberger in view of Weisman and McCanne fails to teach or suggest ***wherein said program instructions are further executable to instantiate a membership service, wherein said membership service implements a membership protocol for joining said peer group such that any peer node may apply for membership in said peer group in accordance with the membership protocol.*** The Examiner cites McCanne (column 19, lines 44-48) as teaching these limitations. This passage states only, "The use of IP Multicast could be exploited locally as a forwarding optimization in the "last-hop" delivery of broadcast content. Thus, it is possible for a client to issue an anycast request, and as a result, be redirected to join a multicast group." This passage clearly does not describe a membership protocol such that any peer node may apply for membership, as recited in claim 44. Instead, it describes that it is possible that a client that performed an action other than applying for membership (i.e., an anycast request) may be redirected to join a multicast group. In addition, there is no description of a membership protocol for joining the group.

For at least the reasons above, the rejection of claim 44 is unsupported by the cited art and removal thereof is respectfully requested.

Claim 87 includes limitations similar to those discussed above regarding claim 44. Therefore, the arguments presented above apply with equal force to this claim as well.

Regarding claim 45, contrary to the Examiner's assertion, Rochberger in view of Weisman and McCanne fails to teach or suggest *wherein said membership service implements a membership policy for said peer group restricting which peers are allowed to join said peer group*. The Examiner again cites McCanne (column 19, lines 44-48) as teaching this limitation. However, as discussed above, this passage does not describe the membership service of Applicants' claims, much less one in which a membership policy restricts which peers are allowed to join a peer group, as recited in claim 45.

For at least the reasons above, the rejection of claim 45 is unsupported by the cited art and removal thereof is respectfully requested.

Regarding claim 49, contrary to the Examiner's assertion, Rochberger in view of Weisman and Zhang fails to teach or suggest *wherein said common set of services implements a protocol for joining and leaving said peer group, wherein said protocol is platform independent as to programming language implementations and network transport for said common set of services*. The Examiner cites Zhang (column 19, lines 9-35) as teaching these limitations. This passage describes how peer group leaders control the joining or merger of two peer groups. This has nothing to do with a protocol for joining and leaving a peer group, nor is any such protocol described as being platform independent as to programming language implementations and network transport for said common set of services, as recited in claim 49.

For at least the reasons above, the rejection of claim 49 is unsupported by the cited art and removal thereof is respectfully requested.

The Examiner rejected claim 48 as being unpatentable over Rochberger and Weisman as applied to claim 39, and further in view of Zhang (U.S. Patent 6,810,259). Applicants traverse this rejection for at least the reasons given above regarding claim 39, from which it depends.

The Examiner rejected claims 88 and 89 under the same rationale as claims 39-45, 48, and 49. However, these claims are directed to different subject matter than claims 39-45, 48, and 49. Since the Examiner has failed to address the differences between these claims and claims 39-45, 48, and 49, the rejection of these claims is improper and removal thereof is respectfully requested.

In the Response to Arguments section of the Office Action dated March 7, 2007, the Examiner submits, "As per the arguments concerning claims 40-45, 49, 86-89, and 98, since Rochberger has been shown to teach an advertisement for a peer group, the rejections stand." The Examiner further points out that the pending claims must be "given the broadest reasonable interpretation consistent with the specification" and "consistent with the interpretation that those skilled in the art would reach." **Applicants assert, however, that as discussed above, the cited references do not teach the peer group advertisement of Applicants' claims**, according to any reasonable interpretation consistent with Applicants' specification. **Applicants also note that claims 40-45, 49, 86-89, and 98 recite many limitations other than "an advertisement for a peer group" and that, for at least the reasons presented above, the cited references fail to teach or suggest all of the additional limitations of these claims.**

CONCLUSION

Applicants respectfully submit that the application is in condition for allowance, and prompt notice to that effect is respectfully requested.

If any fees are due, the Commissioner is authorized to charge said fees to Meyertons, Hood, Kivlin, Kowert, & Goetzel, P.C. Deposit Account No. 501505/5681-07000/RCK.

Respectfully submitted,

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